

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC.**

In the Matter of)	
)	CC Docket No. 95-116
Telephone Number Portability)	
)	
)	

**COMMENTS OF AT&T WIRELESS SERVICES, INC. ON
MAY 13 2003 CTIA PETITION FOR DECLARATORY RULING**

AT&T Wireless Services, Inc. (“AWS”) hereby submits these comments in support of the Petition for Declaratory Ruling of the Cellular Telecommunications and Internet Association (“CTIA”), filed May 13, 2003 (“CTIA petition”).¹

I. INTRODUCTION AND SUMMARY

As the wireless local number portability (“LNP”) deadline looms, CTIA seeks the Commission’s review and resolution of a number of issues in this petition as well as an earlier petition filed in January (“first CTIA petition” or “CTIA Rate Center Petition”) concerning wireless local number portability (“LNP”).² This second petition, like the first CTIA petition, requests the Commission to resolve various issues pertaining to porting between wireline and wireless carriers (“inter-modal porting”) as well as porting between wireless carriers (“intra-modal porting”). Although these issues have been referred to the Commission previously on several occasions over the last five years, the Commission has failed to act on them. Given that

¹ Public Notice, *Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues*, DA 03-1753, CC Docket No. 95-116 (comments due June 13, 2003; replies due June 24, 2003).

² In the first CTIA petition, CTIA requested among other things that the Commission affirm that wireline carriers are obligated to port numbers to wireless carriers whose service area overlaps the wireline carrier’s rate center. The comment cycle has closed on the first CTIA petition and the Commission has yet to address and resolve the important issues raised in that petition. *See Petition for Declaratory Ruling of the Cellular Telecommunications and Internet Association*, CC Docket No. 95-116 (Jan. 23, 2003).

the wireless LNP deadline is only five months away, the Commission must resolve the issues raised in these petitions in an expedited manner. Failure to act on these issues will surely lead to confusion for customers and the industry and delays in successful porting. The following actions by the Commission would provide much needed certainty to carriers' porting obligations and roles:

- Establish a uniform porting interval for inter- and intra-modal porting.
- Resolve that porting obligations between wireline and wireless carriers do not necessarily need to be established in an interconnection agreement, but instead could be established in service level agreements.
- Grant the pending Sprint petition on rating/routing issues, and affirm that issues pertaining to disparate rating and routing points are no basis to prevent intra-modal porting.
- Affirm the rights of customers to port certain types of numbers, such as Type 1 numbers.
- Resolve outstanding issues pertaining to bona fide requests ("BFRs"), top 100 Metropolitan Statistical Areas ("MSAs"), and roaming.

Although CTIA requests that the Commission issue rulings on this petition and the first CTIA petition by September 2003, AWS notes that, depending on the manner in which the Commission resolves certain issues, even 90 days may not be enough time for carriers to implement necessary network upgrades, train personnel, and otherwise prepare for porting. Because there is little time left to make network changes and prepare for porting, AWS believes that the Commission should resolve these issues immediately. In the event that it is unable to do so, the Commission should extend the wireless LNP deadline to ensure that carriers are able to effect the changes necessary to accommodate both inter-modal and intra-modal porting.

Although some incumbent local exchange carriers ("ILECs") contend that all inter-modal porting issues should be segregated and addressed in a separate proceeding and/or delayed until

these issues are fully resolved (independent of the implementation of intra-modal LNP), it appears that these ILECs' concerns stem from a desire to delay or even prevent porting with wireless carriers. The Commission must reject these ILEC proposals for a separate proceeding. As a legal matter, all LECs have the obligation *today* to provide LNP "to all telecommunications carriers, including commercial mobile radio services (CMRS) providers."³ Thus, there is no basis for the ILEC assertions that they should not have to port to wireless carriers until certain issues have been resolved. Moreover, throughout this proceeding, the Commission has relied on *inter-modal* porting as a critical component and justification for its wireless LNP mandate.⁴ Although the need for LNP to promote competition in the highly competitive wireless market is, at a minimum, debatable, there is no dispute that the wireline market is in need of as much competitive aid as possible. It would clearly conflict with Congress' and the Commission's stated policies for it to delay inter-modal porting while requiring intra-modal porting to proceed.

II. PORTING INTERVAL

CTIA requests that the Commission establish a definite porting interval, for both *wireline-wireless* and *wireless-wireless ports*, among other things, to eliminate confusion and uncertainty over this process. Although the Commission has adopted a wireline LNP operations process that provides for a four day porting interval for wireline-wireline ports, there are no

³ *Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking (1996) ("LNP First. Report and Order") at para. 3. As the Commission found in this order, "[b]ecause CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act. As a result, LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers." *Id.* at para. 8.

⁴ *LNP First Report and Order* at para. 160; *see also Matter of Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, WT Docket No. 98-229, CC Docket No. 95-116, Memorandum Opinion and Order (1999) ("CTIA LNP Forbearance Order") at para. 40.

Commission-adopted *wireless* LNP operations processes and no established wireless-wireless or wireline-wireless porting intervals.⁵ Further, the goal that the wireless industry established for processing simple ports – two and one half hours – conflicts with the four day interval established for wireline-wireline ports. The lack of guidance from the Commission on this issue has created disagreement between the industry groups as to what interval should govern wireline-wireless ports, and has raised issues even as to the appropriate interval for wireless-wireless ports.⁶ While ideally, AWS believes that the affected industries should have been able to negotiate a reasonable porting interval that would have worked for all kinds of porting, unfortunately that has not occurred. Given the short time remaining in which to implement wireless LNP, AWS believes that the Commission should establish a *definite and uniform porting interval for all ports, both intra- and inter-modal*.

As CTIA notes, it is critical that the Commission resolve this issue of the wireline-wireless and wireless-wireless porting intervals, given that this issue has been referred to the Commission at least three times previously and has been pending for a number of years. Moreover, the Commission's establishment of a *definite and uniform* porting interval will ensure consistency, which in turn will promote regulatory parity and inter-modal competition, and reduce customer confusion. The Commission has emphasized in various contexts its goal of

⁵ The Commission directed the North American Numbering Council ("NANC") in its *LNP Second Report and Order* to make recommendations to the Commission concerning LNP operations processes and standards for wireless porting and NANC submitted these recommendations in 1998. See *Matter of Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order (1997) ("LNP Second Report and Order") at para. 91; see NANC Local Number Portability Administration Working Group 1st Report on Wireless Wireline Integration (1997) (making such recommendations). However, the Commission has yet to act or adopt these proposals.

⁶ CTIA petition at 7. Although the wireless industry has established two and a half hours as a goal, that interval is not legally binding. Significantly, even in this petition, CTIA hedges a bit, noting that the expectation is that wireless-to-wireless ports "will be completed within one business day."

regulating industries in a competitively neutral and equitable manner.⁷ A uniform porting interval will ensure competitive neutrality by ensuring that one industry is not subject to more restrictive porting requirements than another; and that some customers will not experience more (or less) favorable porting intervals simply due to the type of service that they seek to port. Further, in this instance, there is no public policy or technological basis to establish different porting intervals for the wireline and wireless industries,⁸ and the creation of different porting intervals would very likely thwart the very inter-modal competition that the Commission is trying to promote.⁹

A uniform porting interval will also, as a practical matter, reduce customer and industry confusion and facilitate a smooth porting process. In the absence of a uniform porting interval, customers will not know what to expect in terms of how quickly their number will be ported. If there were differing wireless and wireline porting intervals, customers may receive conflicting messages from the wireless and wireline carrier as to when the port will be complete. Not only is this uncertainty a problem for wireline-wireless ports, but it also is for even some types of

⁷ For example, in developing number resource optimization measures and cost recovery of LNP expenditures, the Commission has emphasized its goal of competitive and technological neutrality. *Numbering Resource Optimization*, FCC 00-104, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking (2000) at para. 3; *First LNP First Report and Order* at para. 126.

⁸ In other cases, the Commission has recognized that disparate treatment is justified for public policy and technological reasons. *See, e.g. LNP First Report and Order* at paras. 164-167 (recognizing that the industries may have differing resources and technological requirements to implement LNP and thus, permitting CMRS providers to implement LNP on a different schedule than wireline carriers because of the different burdens that wireless carriers would face).

⁹ The Commission has emphasized its desire to promote inter-modal competition on a number of occasions in justifying its LNP mandate on CMRS providers. *See, e.g. LNP First Report and Order* at para. 160; *CTIA LNP Forbearance Order* at para. 40.

wireless to wireless ports.¹⁰ Without such a uniform porting interval, customer confusion will persist.¹¹

III. INTERCONNECTION NEGOTIATIONS TO ESTABLISH LNP OBLIGATIONS ARE UNNECESSARY

CTIA reiterates its request in its first petition that the Commission affirm that wireless carriers are not required to establish LNP obligations with other carriers in *interconnection agreements*, and that service level agreements (“SLAs”) instead are appropriate forms of agreement establishing LNP obligations. Although AWS’ preference is that the Commission clarify that wireless carriers need not engage in extended and resource-intensive negotiations to establish LNP obligations in interconnection agreements (or addenda), AWS urges the Commission to clarify that, regardless of the actual form of the LNP agreement, LECs must establish legally binding agreements establishing LNP obligations with requesting carriers in a timely and efficient manner. Moreover, AWS urges the Commission to clarify that all disputes pertaining to negotiation and implementation of LNP agreements may be brought to the Commission for expedited resolution.

As a practical matter, it makes sense to allow carriers to negotiate LNP agreements outside of the interconnection agreement process, because the statutory timeframe for negotiating, arbitrating, and getting approval for “interconnection agreements” is unnecessarily lengthy for the simple type of agreement required for establishing LNP obligations. For

¹⁰ For example, some wireless numbers (*e.g.* Type 1 numbers) require the participation of wireline carriers in the porting process, which would likely make these ports subject to the longer wireline porting interval.

¹¹ The need for a uniform interval is particularly critical, given that the wireless industry’s sales activation process is heavily reliant on third party distributors and retailers (who would be responsible for informing customers of porting intervals). *See* CTIA petition at 5.

example, section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”) provides that parties negotiate at least 135 days before bringing any disputes to a state commission for arbitration and that state commissions have 90 days to approve an interconnection agreement.¹² Although AWS does not believe that all interconnection-related disputes need to be brought to state commissions, and that such disputes could in fact be resolved by the FCC,¹³ one of the negative consequences of requiring LNP agreements to be negotiated under the interconnection agreement framework of section 252 is that it could provide ILECs an opportunity to delay establishing these agreements by disputing issues and arbitrating these state by state. Under the Act’s timeframes for arbitrating and approving “interconnection agreements,” an ILEC could conceivably protract the initial establishment of LNP obligations by many months.

Moreover, requiring wireless carriers to negotiate and arbitrate interconnection agreements in 50 states requires considerable resources and places the wireless carrier at a significant disadvantage. The ILECs clearly have the bargaining power in these situations and the incentive, as the incumbent carrier, to make porting to wireless carriers difficult.¹⁴ In an

¹² 47 U.S.C. Section 252(b)(1) and (b)(4).

¹³ See *Matter of Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC 96-325, CC Docket No. 96-98, CC Docket No. 95-185, First Report and Order (1996) (“Local Competition First Report and Order”) at paras. 125-126; 143 (noting that sections 251 and 252 do not divest the Commission of its section 208 authority to review complaints; and that the Commission has authority to review complaints alleging violations of good faith negotiation pursuant to its section 208); see, e.g. *Matters of TSR Wireless, LLC, et al. v. U.S. West Communications*, FCC 00-194, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order (2000) (resolving complaint pertaining to section 251).

¹⁴ In fact, AWS is currently experiencing significant delay and difficulty in negotiating LNP agreements with ILECs. In general, the ILECs are insisting on terms and conditions that are unilateral, that would make porting difficult, and/or that would require wireless carriers to conform to a wireline- competitive local exchange (“CLEC”) framework. Wireless carriers provide service in a manner that is fundamentally

attempt to avoid such difficulties and prohibitive transaction costs, AWS and other wireless carriers have agreed on a standard industry-wide SLA, which would establish LNP obligations in an efficient and simple manner. The ILECs, however, generally have been resistant to such an agreement.

Ultimately, regardless of the form in which LNP obligations are established (SLA vs. interconnection agreements), AWS urges the Commission to clarify that ILECs have the obligation to establish LNP agreements with wireless carriers in as timely, uniform and efficient a manner as possible. Obstructionist behavior such as delaying negotiations or proposing clearly unacceptable terms and conditions is contrary to the spirit of the Act and the FCC's LNP requirements. AWS also urges the Commission to resolve expeditiously any disputes that arise in the context of establishing and implementing LNP agreements.

IV. OTHER OUTSTANDING ISSUES MUST BE RESOLVED

There are a number of other issues that CTIA identifies in this second petition as requiring Commission resolution. AWS agrees that these issues are also important to ensure successful porting and/or to clarify obligations of carriers.

A. Sprint-BellSouth Rating/Routing Dispute

CTIA notes that the Commission's failure to address and resolve the pending Sprint petition "will lead to further delays in intermodal number portability" and urges the Commission to resolve the petition in a "manner that promotes number portability."¹⁵

different from wireline carriers in many respects and thus, ILEC LNP agreements entered into with CLECs are inappropriate for wireless carriers.

¹⁵ CTIA petition at 25. As CTIA points out, parties have asserted that the CTIA Rate Center petition "raises the same transport and compensation issues for rural carriers that have come to light" in connection with other petitions, including the Sprint petition. *See Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92 (filed May 9, 2002)

AWS agrees that the Commission should grant the Sprint petition.¹⁶ It has been pending at the Commission for over one year, and seeks only a simple affirmation of the existing law.¹⁷ Moreover, the Commission's failure to resolve this issue in a timely manner has exacerbated the problems that the wireless carriers have had in establishing arrangements with rural LECs for the exchange of traffic and interconnection of networks. Moreover, although AWS believes that the issues raised in the Sprint petition exist separate and apart from LNP, it is clear from comments and ex partes that some LECs (and even some rural wireless carriers) may attempt to raise what they view as "open issues" (from the Sprint petition or other pending interconnection-related proceedings) as a basis to limit or delay porting or otherwise impose unreasonable terms and conditions.

For example, some ILECs argue that before they should be required to port numbers to a wireless carrier, that the wireless carrier first be required to obtain NPA/NXXs or points of presence in each of the ILEC's rate centers.¹⁸ USTA recently filed an ex parte in this docket contending that wireless carriers must establish a physical "point of presence" within a rate center prior to porting a number from that rate center.¹⁹ In the absence of such a point of

("Sprint petition").

¹⁶ AWS also filed reply comments on the Sprint petition, emphasizing its support of the Sprint petition and urging the Commission to grant the Sprint petition as expeditiously as possible. *See* AWS reply comments on Sprint petition.

¹⁷ Sprint seeks a Commission ruling that an ILEC has the obligation to load numbering resources in its network for an interconnecting carrier, even where the number has disparate rating and routing points.

¹⁸ The Michigan Exchange Carriers Association noted on the CTIA Rate Center Petition that "[t]he fair solution for wireline to wireless local number portability is for wireless carriers to establish a physical point of presence in each wireline serving center." Michigan Exchange Carriers Association comments on CTIA Rate Center Petition at 5.

¹⁹ USTA ex parte at 1 (May 30, 2003). USTA explains that this means the wireless carrier should obtain physical circuits providing interconnection trunking between the ILEC and the interconnecting service provider, which circuits have one end point that resides either in the serving rate center or at the ILEC

presence, other carriers have asserted that porting numbers to wireless carriers will require them to transport traffic outside of their local exchange to where the number is ported, and that they will not be adequately compensated for such transport.²⁰ It appears that these carriers intend to use these arguments to prevent or limit inter-modal porting, with the goal of thwarting the competition that might occur in their territories as a result of wireless LNP.

The positions that the ILECs are espousing are not only contrary to well-established Commission rules and precedent and industry practices, but also provide no legitimate basis on which to resist inter-modal porting. Among other things, these ILEC positions ignore that: (i) wireless carriers today are not required to have a “point of presence” in each rate center;²¹ (ii) ILECs are required to transport (without compensation) originating traffic to interconnecting carriers;²² and (iii) wireless carriers today can and do designate different rating and routing points for numbers.²³ As is explained in detail in AWS’ comments on the first CTIA petition,

switch that serves that rate center. USTA notes that the “other end point must terminate at the interconnecting service provider’s network switching.”

²⁰ For example, NECA/NTCA argues that “[c]ompensation shortfalls may also result when carriers seek to use NPA-NXX codes with routing points that differ from rating points, as in the case for numbers ported to a wireless carrier’s POI [point of interconnection] situated outside the rural carrier’s serving areas.” NECA/NTCA comments on CTIA Rate Center petition, at 6.

²¹ Establishing points of interconnection (“POIs”) within each rate center of an ILEC’s territory clearly conflicts with the Commission’s established requirement that interconnecting carriers do not need to have a POI in each rate center and that competing and CMRS carriers can interconnect at one technically feasible point per LATA. See 47 C.F.R. 51.321, *Matter of Application by SBC Communications Inc. et al to Provide In-Region, InterLATA Services in Texas*, FCC 00-238, CC Docket No. 00-65, Memorandum Opinion and Order (rel. June 30, 2000) at para. 78, n. 174; see also *Developing a Unified Intercarrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, Notice of Proposed Rulemaking (2001), at para. 72.

²² Pursuant to 47 C.F.R. 51.703(b), a “LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC’s network.”

²³ The ILEC position that wireless carriers cannot designate disparate rating/routing points for a number would overturn years of established CMRS-LEC interconnection practices and Commission precedent. Specifically, established CMRS network architecture today results in almost all wireless numbers having disparate rating and routing points. See AWS reply comments on CTIA Rate Center Petition at 3-4.

the only basis for denying porting is technical infeasibility; nothing that the ILECs have alleged in response to the CTIA petition meets this prerequisite.²⁴

It is critical therefore that the Commission grant the Sprint petition in order to affirm established interconnection practices so that ILECs do not continue to interpose these pending “issues” as obstacles to wireless interconnection and inter-modal porting. To the extent that the Commission does not decide the issues in the Sprint petition in this proceeding, the Commission should, at a minimum, issue a ruling affirming that ILECs must port to wireless carriers as requested by the first CTIA petition, and ILECs may not use or erect these “open issues” as barriers to inter-modal porting.

B. Type 1 Porting

CTIA asks the FCC to resolve issues related to Type 1 number porting, some of which BellSouth has also raised before the Commission previously. In fact, BellSouth has requested that the Commission establish a *separate proceeding* to resolve all inter-modal porting issues (including the Type 1 issue) before such obligations can attach to carriers.²⁵ AWS supports CTIA’s request that the Commission resolve this matter simply by affirming that carriers should have the right to port Type 1 numbers and clarifying that there are no technical issues preventing Type 1 numbers from being ported.²⁶ Moreover, AWS agrees with CTIA that a separate proceeding is *not necessary* to address Type 1 porting or other inter-modal porting issues and

²⁴ See AWS comments and reply comments on CTIA Rate Center Petition.

²⁵ BellSouth reply comments on CTIA Rate Center petition; BellSouth ex parte. It is critical to note that BellSouth’s ex parte raises concerns with only a limited category of Type 1 porting (i.e., Type 1 numbers ported to Type 1 trunks). Significantly, BellSouth does not raise issue with other types of Type 1 porting (i.e., porting Type 1 numbers to Type 2 interconnection).

²⁶ See CTIA petition at 28. CTIA notes that with this Commission affirmation, wireline and wireless carriers could develop the necessary procedures for such ports.

urges the Commission to reject BellSouth's patent ploys to delay inter-modal porting.²⁷ As CTIA notes, a "separate rulemaking proceeding would serve only to delay the availability of number portability (both intra-modal and inter-modal) to consumers who have no reason to know that they are served by Type 1 interconnection."²⁸

C. Top 100 MSAs/BFRs/Roaming

Finally, AWS supports CTIA's request that the Commission resolve and clarify issues that remain pending from its *NRO Third Report and Order* that primarily affect rural carriers' implementation of LNP.²⁹ As illustrated from the rural LEC comments on the first CTIA petition, the lack of resolution of these issues in the *NRO Third Report and Order* leaves some carriers uncertain about the scope of their LNP obligations.

In order to prevent further uncertainty and to ensure successful and efficient porting, the Commission must clarify: (i) the scope of the top 100 MSAs; and (ii) the bona fide request requirement so that carriers know whether they must port numbers or not and whether they must update their networks to deploy LNP. These fundamental outstanding issues are leaving some rural carriers in a state of uncertainty with regard to LNP. Some rural ILECs have also used these outstanding issues as reasons for the Commission not to grant the first CTIA petition. For example, USTA asserts that it is "concerned that the CTIA [Rate Center] Petition, if granted, may result in mandatory implementation of LNP that would do away with the *bona fide* request

²⁷ See BellSouth ex parte (requesting separate rulemaking to address all inter-modal porting issues).

²⁸ CTIA petition at 29.

²⁹ See *Matter of Numbering Resource Optimization*, CC Docket Nos. 99-200 and 95-116, Third Report and Order on Reconsideration in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116 (2002) ("NRO Third Report and Order"). The comment cycle on this order and notice closed on May 20, 2002.

trigger.”³⁰ However, to the extent that the Commission has not decided issues such as the bona fide request trigger, there is no basis for carriers to believe that the trigger would be eliminated independent of specific action in the *NRO Third Report and Order*.

Finally, the Commission should clarify and confirm the obligation of all carriers to support nationwide roaming.³¹ As AWS has pointed out in prior comments, the failure of all carriers to support nationwide roaming will create network and billing issues for carriers and is an issue that requires resolution.³²

For the foregoing reasons, AWS respectfully requests that the Commission grant the CTIA petition and issue the rulings recommended above.

Respectfully submitted,

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³⁰ See USTA reply comments on CTIA Rate Center petition at 7; see also NECA/NTCA comments on CTIA Rate Center petition at 5.

³¹ *LNP First Report and Order* at para. 166 (requiring all CMRS providers to support roaming); see also 47 C.F.R. Section 52.31(a)(2).

³² See AWS Comments on Kodiak/Pine Belt Petitions for Waiver, CC Docket No. 99-200 (Feb. 13, 2003).